

18-6101. RAPE DEFINED. (1) Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with a penis accomplished under any one (1) of the following circumstances:

(1a) Where the victim is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older, and the victim is not lawfully married to the perpetrator.

(2b) Where the victim is sixteen (16) or seventeen (17) years of age and the perpetrator is three (3) years or more older than the victim, and the victim is not lawfully married to the perpetrator.

(3c) Where the victim is incapable, through any unsoundness of mind, due to any cause including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent.

(4d) Where the victim resists but the resistance is overcome by force or violence.

(5e) Where the victim is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anaesthetic substance.

(6f) Where the victim is prevented from resistance due to an objectively reasonable belief that resistance would be futile or that resistance would result in force or violence beyond that necessary to accomplish the prohibited contact.

(7g) Where the victim is at the time unconscious of the nature of the act. As used in this section, "unconscious of the nature of the act" means incapable of resisting because the victim meets one (1) of the following conditions:

(a) Was unconscious or asleep;

(b) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(8h) Where the victim submits under the belief that the person committing the act is the victim's spouse, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

(9i) Where the victim submits under the belief that the person committing the act is someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused, with the intent to induce such belief.

(10j) Where the victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against the victim; or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.

(2) The provisions of ~~subsections~~ subparagraphs (1a) and (2b) of this subsection (1) shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of ~~subsection~~ subparagraph (2b) of ~~this subsection~~ (1), in determining whether the perpetrator is three (3) years or more older than the victim, the difference in age shall be measured from

the date of birth of the perpetrator to the date of birth of the victim.

(3) Males and females are both capable of committing the crime of rape as defined in this section.

(4) As used in this section, "lawfully married" does not include any marriage where the perpetrator was engaged in bigamy or polygamy, or that was entered into after the facts or circumstances that give rise to a violation of subparagraph (a) or (b) of subsection (1). Additionally, "lawfully married" does not include a foreign marriage, when demonstrated by clear and convincing evidence, that:

(a) the victim was forced to marry the perpetrator under threat of violence to the victim or the victim's family;

(b) the perpetrator entered the marriage for the purpose of evading laws against prostitution, human trafficking, or incest; or

(c) the United State government has found, pursuant to federal law, that the marriage was entered into for the purpose of evading United States immigration laws.

18-6103. PENETRATION. The essential guilt of rape consists in the outrage to the person and feelings of the victim ~~female~~. Any sexual penetration, however slight, is sufficient to complete the crime.